



Paul Helliker
Director

Department of Pesticide Regulation



Gray Davis
Governor

Winston H. Hickox
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Environmental
Protection Agency

DPR Regulation No. 02-008

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF PESTICIDE REGULATION

Toxic Air Contaminants

December 20, 2002

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A Department of the California Environmental Protection Agency

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION
Toxic Air Contaminants
DPR Regulation No. 02-008

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to amend section 6860 of Title 3, California Code of Regulations (3 CCR). The proposed regulatory action designates the pesticide chemical methyl isothiocyanate (MITC) and other pesticides that generate MITC as toxic air contaminants (TACs) in subsection (a) pursuant to Food and Agricultural Code (FAC) section 14023. DPR also proposes to add four pesticide chemicals to subsection (b) of section 6860 pursuant to FAC section 14021: cacodylic acid, carbon disulfide-generating pesticides, 10 10' oxybisphenoxyarsine, and phosphine and phosphine-generating pesticides.

SUBMITTAL OF COMMENTS

Any interested person may present comments in writing about the proposed action to the agency contact person named below. Written comments must be received no later than 5:00 p.m. on February 7, 2003. Comments regarding this proposed action may also be transmitted via e-mail <dpr02008@cdpr.ca.gov> or by facsimile transmission at (916) 327-9688.

A public hearing has been scheduled for the time and place stated below to receive oral comments regarding the proposed regulatory changes.¹

DATE: February 6, 2003
TIME: 1:00 p.m.
PLACE: California Environmental Protection Agency Headquarters Building
Coastal Hearing Room
1001 I Street,
Sacramento, California 95814

A DPR representative will preside at the hearing. Persons who wish to speak will be asked to register before the hearing. The registration of speakers will be conducted at the location of the hearing from 12:30 to 1:00 p.m. Generally, registered persons will be heard in the order of their registration. Any other person who wishes to speak at the hearing will be afforded the opportunity to do so after the registered persons have been heard. If the number of registered persons in attendance warrants, the hearing officer may limit the time for each presentation in order to allow everyone wishing to speak the opportunity to be heard. Oral comments presented at a hearing carry no more weight than written comments.

¹ If you have special accommodation or language needs, please notify DPR. TTY/TDD speech-to-speech users may dial 7-1-1 for the California Relay Service.

EFFECT ON SMALL BUSINESS

DPR has determined that the proposed regulatory action does not affect small businesses. The regulatory action merely adds MITC and other pesticides that generate MITC to the TAC List in section 6860(a) and does not restrict or further regulate use of the chemical by businesses. Pursuant to FAC section 14023(e), the need for, and appropriate degree of, control measures for a pesticide listed as a TAC pursuant to FAC section 14023(d) shall be determined by DPR in consultation with the Office of Environmental Health Hazard Assessment (OEHHA), the Air Resources Board (ARB), and the air pollution control districts or air quality management districts in the affected counties. If a need for control measures is determined for MITC and other pesticides that generate MITC, the proposed control measures will be promulgated in a separate regulatory action.

Similarly, DPR also proposes to add four pesticide chemicals to subsection (b) of section 6860 pursuant to FAC section 14021: cacodylic acid, carbon disulfide-generating pesticides, 10 10' oxybisphenoxyarsine, and phosphine and phosphine-generating pesticides. The DPR director is required to add these pesticides since they have been identified as hazardous air pollutants pursuant to section 7412 of Title 42 of the United States Code [42 U.S.C. 7412 section 112(b)].

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

FAC section 14021 defines a TAC as "an air pollutant that may cause or contribute to an increase in mortality or an increase in serious illness, or which may pose a present or potential hazard to human health." As mandated by FAC section 14022, DPR, in consultation with OEHHA and ARB, evaluates the health effects of pesticides which may be, or are, emitted into the ambient air of California. FAC sections 14021-14022 describe this evaluation process. Upon completion of this evaluation, DPR prepares a report on the health effects of the pesticide in question. Pursuant to FAC section 14023, an independent Scientific Review Panel (SRP) reviews this report and submits its written findings to DPR. Within ten days following receipt of the SRP's findings, FAC section 14023(d) requires DPR to "prepare a hearing notice and a proposed regulation which shall include the proposed determination as to whether a pesticide is a toxic air contaminant."

DPR evaluated MITC and other pesticides that generate MITC as possible TACs. The SRP has reviewed DPR's report *Evaluation of Methyl Isothiocyanate as a Toxic Air Contaminant* and recommended in their written findings that the DPR Director initiate regulatory steps to list MITC and other pesticides that generate MITC as TACs.

Based upon the results of the evaluation of MITC, the findings of the SRP, and the criteria in 3 CCR section 6890 for identifying pesticides as TACs, the Director has declared MITC and other pesticides that generate MITC to be TACs. The proposed regulatory action adds MITC and other pesticides that generate MITC to section 6860(a).

MITC is the primary breakdown product of three other pesticides--the soil fumigants metam-sodium, metam-potassium, and dazomet. On contact with warm, moist soil, these pesticides decompose quickly to MITC and other volatile gases, which diffuse through the spaces in the soil, and account for the fumigant activity of these soil sterilants. The primary source of MITC in the environment due to pesticide use is from the breakdown of metam-sodium.

Existing subsection (b) contains a list of pesticides that have been designated as TACs pursuant to FAC section 14021. FAC section 14021 provides that, "Pesticides which have been identified as hazardous air pollutants pursuant to section 7412 of Title 42 of the United States Code shall be identified by the Director as toxic air contaminants." DPR proposes to list four compounds as TACs on the basis of their listing as federal hazardous air pollutants and their presence in pesticides currently registered for use in California. As stated previously, these compounds include cacodylic acid, carbon disulfide-generating pesticides, 10 10' oxybisphenoxyarsine, and phosphine and phosphine-generating pesticides.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, nor does it require reimbursement by the State pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the regulatory action does not constitute a "new program or higher level of service of an existing program" within the meaning of section 6 of Article XIII of the California Constitution. DPR has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action.

COSTS OR SAVINGS TO STATE AGENCIES

DPR has determined that no savings or increased costs to any State agency will result from the proposed regulatory action.

EFFECT ON FEDERAL FUNDING TO THE STATE

DPR has determined that no costs or savings in federal funding to the State will result from the proposed action.

EFFECT ON HOUSING COSTS

DPR has made an initial determination that the proposed action will have no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

DPR has made an initial determination that adoption of this regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

DPR has made an initial determination that the adoption of this regulation will not have a significant cost impact on representative private persons or businesses. The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

IMPACT ON THE CREATION, ELIMINATION, OR EXPANSION OF JOBS

DPR has determined it is unlikely the proposed regulatory action will impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business with the State of California.

CONSIDERATION OF ALTERNATIVES

DPR must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or businesses than the proposed regulatory action.

AUTHORITY

This regulatory action is taken pursuant to the authority vested by Food and Agricultural Code sections 14004.5 and 14005.

REFERENCE

This regulatory action is to implement, interpret, or make specific Food and Agricultural Code sections 14004.5 and 14005.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DPR has prepared an Initial Statement of Reasons, and has available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation may be obtained from the agency contact person named in this notice. The information upon which DPR relied in

preparing this proposal and the rulemaking file are available for review at the address specified below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period, DPR may make the regulation permanent if it remains substantially the same as described in the Informative Digest. If DPR does make substantial changes to the regulation, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the agency contact person named in this notice. DPR will accept written comments on any changes for 15 days after the modified text is made available.

AGENCY CONTACT

Written comments about the proposed regulatory action; requests for a copy of the Initial Statement of Reasons, the proposed text of the regulation, and a public hearing; and inquiries regarding the rulemaking file may be directed to:

Fred Bundock, Regulatory Program Specialist
Office of Legislation and Regulations
Department of Pesticide Regulation
1001 I Street, P.O. Box 4015
Sacramento, California 95812-4015
(916) 324-4194

Note: In the event the contact person is unavailable, inquiries should be directed to the following backup contact person at the same address as noted above:

Linda Irokawa-Otani, Regulations Coordinator
(916) 445-3991

Questions on the substance of the proposed regulatory action may be directed to:

Randy Segawa, Senior Environmental Research Scientist
Environmental Monitoring Branch
Department of Pesticide Regulation
(916) 324-4137

This Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulation are also available on DPR's Internet Home Page <<http://www.cdpr.ca.gov>>.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code section 11346.9(a) may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on DPR's Internet Home Page and accessed at <<http://www.cdpr.ca.gov>>.

DEPARTMENT OF PESTICIDE REGULATION

Paul Heliker
Director

11/26/02
Date